

1936
 * Oct. 21.
 * Nov. 9.

IN THE MATTER OF THE INCOME TAX ACT
 (MANITOBA) AND AMENDMENTS

THOS. JACKSON & SONS, LTD.....APPELLANT;

AND

THE MUNICIPAL COMMISSIONER....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Assessment and taxation—Income tax—Income Tax Act, Man. (C.A. 1924, c. 91) as amended in 1930, c. 22—Ss. 8 (4), 4 (p)—Exemption of profits of a company “accumulated prior to and undistributed at” December 31, 1929 (s. 4 (p))—Exemption not available to company in respect of dividends received by it in 1934 from another company out of latter’s profits accumulated prior to and undistributed at December 31, 1929—Construction of statutes.

S. 8 (4) (enacted in 1930, c. 22) of the *Income Tax Act*, Man. (C.A. 1924, c. 91) provided that every joint stock company (other than a personal corporation) pay a tax upon the amount of its income within the province during the preceding year; that this tax be paid on April 30, 1931, and annually thereafter. S. 4 (p) (enacted in 1930, c. 22) provided that “profits of a * * * joint stock company * * * accumulated prior to and undistributed at” December 31, 1929, be not liable to taxation under s. 8 (4).

In 1935 appellant company was assessed for income tax in respect of moneys received by it in 1934 as dividends from N. Co., which moneys were part of profits of N. Co. accumulated by N. Co. prior to and undistributed at December 31, 1929.

Held: Appellant company was properly so assessed. Read literally, s. 4 (p) applied only to profits in the hands of the accumulating company, and would not exempt appellant company from the liability created by s. 8 (4). The mere fact that, reading s. 4 (p) literally and giving full effect to s. 8 (4), the result might be that s. 4 (p) would be wholly unnecessary, was not sufficient to overcome the language of the statute.

Judgment of the Court of Appeal for Manitoba (44 Man. L.R. 228) affirmed in the result.

APPEAL by Thos. Jackson & Sons Ltd. from the judgment of the Court of Appeal for Manitoba (1) dismissing its appeal from the judgment of Dysart J. (2) dismissing its appeal from the Municipal Commissioner of the Province of Manitoba affirming an assessment of the appellant under the *Income Tax Act* of Manitoba (C.A. 1924, c. 91, and amendments) in respect of the sum of \$73,016.08 received by the appellant during the year 1934 as and by way of dividends from Nelson River Construction Ltd.

(1) 44 Man. L.R. 228; [1936] 2 W.W.R. 535. (2) 44 Man. L.R. 228; [1936] 1 W.W.R. 717.

* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis and Hudson JJ.

That sum was part of the profits of Nelson River Construction Ltd. which were accumulated by it prior to, and were undistributed at, December 31, 1929. The appellant and Nelson River Construction Ltd. are joint stock companies and neither of them is a personal corporation within said Act.

Sec. 8 (4) (enacted in 1930, c. 22) of said Act provides (as amended in 1932, c. 49, in respects not here material):

Save as herein otherwise provided, every corporation and joint stock company, other than a personal corporation, no matter how created or organized, carrying on business within the Province shall pay a tax of five per centum upon the amount of its income within the Province during the preceding year.

The tax imposed by this subsection shall be paid in the manner provided by this Act on the thirtieth day of April, 1931, and annually thereafter.

Sec. 4 (p) (enacted in 1930, c. 22) provides:

Profits of a corporation or joint stock company other than a personal corporation accumulated prior to and undistributed at the 31st day of December, 1929, shall not be liable to taxation under subsection (4) of section 8 of "The Income Tax Act."

The appellant contended that as the said sum of \$73,016.08 was part of the profits of Nelson River Construction Ltd. accumulated by the latter prior to and undistributed at December 31, 1929, the appellant was not liable for income tax under said Act in respect thereof.

W. N. Tilley K.C. for the appellant.

G. L. Cousley for the respondent.

The judgment of the court was delivered by

HUDSON J.—In the year 1935 the Manitoba Administrator of Income Tax assessed the appellant, Thos. Jackson and Sons, Limited, for income tax in respect of moneys received by them in the year 1934 from the Nelson River Construction Company, Limited. The moneys so paid were dividends out of profits accumulated by the Nelson Company prior to the 31st December, 1929.

From the decision of the Administrator the appellants appealed unsuccessfully to the Municipal Commissioner, to Mr. Justice Dysart in the Court of King's Bench of Manitoba and from there to the Court of Appeal in Manitoba where its appeal was unanimously dismissed. It is from that Court that this appeal is now brought to us. The Manitoba income tax law originally applied only to individuals but in 1930 it was amended to apply to com-

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panies as well. The material charging section in the amendment then passed, and still in force, is 8 (4) reading as follows:

8 (4). Save as herein otherwise provided, every corporation and joint stock company, other than a personal corporation, no matter how created or organized, carrying on business within the Province shall pay a tax of five per centum upon the amount of its income within the Province during the preceding year.

The tax imposed by this subsection shall be paid in the manner provided by this Act on the thirtieth day of April, 1931, and annually thereafter.

This section taken by itself is clearly sufficient to authorize the assessment of the appellants.

There was also inserted in the amendments of that year a section, 4 (p), reading as follows:

4. The following shall not be liable to taxation hereunder:—

* * *

(p) profits of a corporation or joint stock company other than a personal corporation accumulated prior to and undistributed at the 31st day of December, 1929, shall not be liable to taxation under subsection (4) of section 8 of "The Income Tax Act."

This section read by itself clearly would not exempt the appellants from the liability created by 8 (4). Read literally it applies only to profits in the hands of the accumulating company and would not relieve the beneficiaries on any distribution.

But it is argued, and with some force, that if section 4 (p) is read literally and section 8 (4) given its full effect, the result would be that 4 (p) would be wholly unnecessary, and the real intention of the Legislature must have been to relieve corporate shareholders from the tax which they would otherwise be liable for under 8 (4), and that effect should be given to this intention.

However, in the absence of some more definite expression of intention by the Legislature, in my opinion we cannot hold that a clear and specific charging section is limited by an exempting section which, read literally, does not impose such a limitation. The mere fact that the effect might be to render the exempting section altogether ineffective is not sufficient to overcome the language of the statute.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Johnston, Major, Finlayson & Fraser.*

Solicitor for the respondent: *John Allan.*